

SOUTHERN UTAH WILDERNESS ALLIANCE

IBLA 99-295

Decided September 21, 1999

Appeal from a decision of the Field Manager, Fillmore (Utah) Field Office, Bureau of Land Management, authorizing the installation of six small mammal and bird water catchment guzzlers in the Thomas Range in Juab County, Utah. J-010-099-027EA.

Affirmed; request for stay denied as moot.

1. Federal Land Policy and Management Act of 1976:
Wilderness Act

When BLM prepares an environmental assessment regarding the environmental impact of the installation of water guzzlers in an area previously inventoried but not designated as a Wilderness Study Area, BLM is not required to include in such assessment consideration of a subsequent inventory by a citizens' group concluding that the area possesses wilderness characteristics.

APPEARANCES: Liz Thomas, Esq., Cedar City, Utah, for appellant; David K. Grayson, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Southern Utah Wilderness Alliance (SUWA or appellant) has appealed a March 31, 1999, decision of the Field Manager, Fillmore (Utah) Field Office, Bureau of Land Management (BLM), authorizing the installation of six small mammal and bird water catchments (guzzlers) on lands located in six secs. in T. 11 S. and T. 12 S., R. 11 W., in the Thomas Mountains in Juab County, Utah. BLM found that, based on a March 1999 Environmental Assessment (EA) (J-010-099-027), the proposed action would not have any significant impacts on the human environment. BLM also found that its decision conformed to the House Range Resource Management Plan and Record of Decision, approved October 1987. Appellant has filed a Request for Stay, asking that BLM's decision be stayed pending the Board's decision on its appeal.

The record indicates that each guzzler would be built in accordance with the Nevada Game and Fish catchment design, and would consist of a 300-gallon storage tank located under a collection apron comprised of steel panels and measuring 12 by 8 feet. Each site would be fenced to prevent damage by livestock, wild horses, or big game, and the maximum amount of disturbance anticipated at each site is 900 square feet.

In its Statement of Reasons (SOR), SUWA argues that BLM's EA failed to adequately consider the wilderness characteristics of the Thomas Range. Appellant acknowledges that the proposed project is not located in a designated wilderness area, but argues that a citizens' inventory of Utah public lands, which resulted in a document entitled "Citizens' Wilderness Proposal" ^{1/} (Citizens' Proposal) and subsequently was utilized in drafting pending Senate Bill 861, concluded that the Thomas Range possesses wilderness characteristics. SUWA notes that five of the six guzzlers are located on land included in the Citizen's Proposal, and asserts that BLM erred in not considering the proposal in developing its EA.

Citing 40 C.F.R. § 1502.15, SUWA argues that the National Environmental Policy Act of 1969 (NEPA) requires "that the most current information be used and that the environmental review contain an accurate description of the existing environment affected by the proposed action." (SOR at 9.) Appellant also argues that 40 C.F.R. § 1502.1 requires the full and fair examination of all important issues, including whether an area has wilderness value.

Moreover, SUWA argues that BLM violated NEPA by failing to consider an adequate range of alternatives in its decision, and failed to explain why the guzzlers could not be located on lands outside of the Thomas Range, which has been identified as having wilderness character in Senate Bill 861 entitled "America's Redrock Wilderness Act." (SOR at 13.) SUWA also alleges that BLM failed to follow NEPA by considering the cumulative impacts and indirect effects of placing the guzzlers on lands in the Thomas Range. Appellant argues that BLM had a duty, pursuant to 40 C.F.R. §§ 1508.7 and 1508.8, to consider the reasonably foreseeable consequences of the impact and effect of putting the guzzlers on land that had been identified by the citizens' group as having wilderness characteristics.

BLM filed an Answer asserting that since the Thomas Range has not been identified as possessing wilderness characteristics, BLM was not obliged in its EA to consider whether installation of the proposed guzzlers violated wilderness study area (WSA) management criteria. Further,

^{1/} The date of the proposal is not clear from the record, but the record does include a Feb. 6, 1999, SUWA letter to BLM which refers to the "newly inventoried Thomas Range wilderness unit," and has an attached map dated Dec. 29, 1998, showing the unit's location.

BLM asserts that the Thomas Range was evaluated, pursuant to section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1994), for wilderness characteristics in 1980, and the November 1980 BLM INTENSIVE WILDERNESS INVENTORY FINAL DECISION ON WILDERNESS STUDY AREAS found that because of the popularity of the range for rockhounding, the area was heavily used year round, resulting in substantially noticeable human imprints and less than outstanding opportunities for solitude. The decision also found that much of the range had been the site of mining and drilling operations, and that the naturalness of the area had been impacted by a number of range improvements and roads.

BLM reports that appellant filed maps with the Fillmore Field Office, BLM, which depict certain areas of the range as possessing wilderness characteristics. However, BLM asserts that appellant "ha[s] presented no evidence of the standards or procedures [it] used in making determinations or who made these determinations and what their qualifications might be or how otherwise these determinations were made." (Answer at 5.) BLM further argues:

BLM * * * complied with § 603 of FLPMA when it did its inventory of the Thomas Range in 1980. While BLM has authority under § 201 of FLPMA to conduct a re-inventory of the Thomas Range, should it [choose] to do so, it is not required to do so because [citizens'] groups have circled it on a map and allege that it has wilderness characteristics. Appellant is trying to appeal a BLM decision made 19 years ago, which it cannot do. Southern Utah Wilderness Alliance, 128 IBLA 52, 66 (1993).

(Answer at 5.)

Moreover, citing Wyoming Outdoor Council, 147 IBLA 10 (1998), BLM asserts that it has complied with NEPA because it has taken a hard look at the environmental consequences of installing the guzzlers and SUWA has failed to demonstrate that BLM failed to act when considering a substantial environmental problem of material significance.

BLM also argues that it did not violate NEPA by failing to consider an adequate range of alternatives, noting that the six guzzlers are placed in relation to 12 existing guzzlers, and the 18 guzzlers form a system which is "modeled on that recommended by the Nevada Division of Wildlife for this type of habitat." (Answer at 6.) Placing the six guzzlers outside of the larger system would not enhance small wildlife habitat and would thus be a no action alternative, BLM argues.

BLM disputes SUWA's allegation that it has not adequately considered the cumulative impacts and indirect effects of the action. BLM argues that by dispersing the six guzzlers across an 8-square mile area it has minimized negative cumulative impacts and enhanced the impact of the guzzler system on small wildlife habitat and populations. Further, BLM argues that colored metal used in the construction of the guzzlers makes them inconspicuous.

Appellant filed a Reply to BLM's Answer, essentially restating its previous arguments, but detailing the citizens' inventory procedures. SUWA notes that the inventory was overseen by the Utah Wilderness Coalition (UWC), and asserts that the inventory was carried out by competent staff, interns, and volunteers. Appellant argues that UWC used the same standards that BLM used in its 1996 reinventory, and concludes that BLM's reliance on its 1980 inventory was in error.

[1] The time for challenging BLM's 1980 inventory excluding the area in question as a WSA has long since passed. Accordingly, the sole issues before the Board are (1) whether BLM was required to consider the Citizens' Proposal in its March 1999 EA, and (2) whether the EA was adequate in all other respects.

As to the first issue, SUWA has presented no authority which requires that before BLM authorizes any use of lands previously inventoried and excluded as a WSA, it must consider in its EA findings by a citizens' group contradicting such exclusion.

Moreover, we held in Southern Utah Wilderness Alliance, *supra*, that BLM may administer for other purposes lands excluded from wilderness consideration. In that case, SUWA challenged a BLM Decision Record and Finding of No Significant Impact approving an application for permit to drill (APD) a natural gas well on a Federal lease along the north canyon rim of the White River, approximately 30 miles south of Vernal, Utah. Therein we stated at pages 65-66:

Applicants also argue that the EA violated NEPA in failing to consider any potential adverse impacts APD approval might have on the area's eligibility for designation as a wilderness area within the National Wilderness System. Specifically, appellants argue that approval of the APD allows development within a potential wilderness area, as proposed by Utah Congressman Wayne Owens, and that under such circumstances, NEPA requires preparation of an EIS [environmental impact statement].
13/

First, NEPA does not contain directives which BLM must observe in evaluating the wilderness characteristics of an area. That evaluation was conducted pursuant to relevant provisions of [FLPMA] and the Wilderness Act. The Wilderness Society, 119 IBLA 168 (1991).

Second, as we have stated on a number of occasions, final administrative decisions relating to the designation of lands as WSA's in Utah were completed in the 1980's. Southern Utah Wilderness Alliance, 123 IBLA 13, 18 (1992); Southern Utah Wilderness Alliance, 122 IBLA 17, 21 n.4 (1992). The lands in question were not included in a WSA. Therefore, BLM may administer them for other purposes, including the approval of drilling for oil and gas. Id.

13/ The Owens bill, H.R. 1500, was introduced in the House of Representatives on Mar. 16, 1989, and proposes approximately 12,000 acres in the Book Cliffs Resource Area for inclusion within the national Wilderness Preservation System, to be designated as the White River Wilderness.

Thus, in this case, BLM may administer the lands in question by authorizing the creation of water catchments on the lands. In addition, there is no evidence that construction of the catchments would impair the wilderness characteristics of the land.

As to the remaining aspects of the EA, in 1998 the Fillmore Field Office, BLM, conducted EA J-050-098-106, pursuant to a request from the Central Region Office of the Utah Division of Wildlife Resources (UDWR) for permission to construct 12 small water catchment guzzlers to benefit small game and nongame birds and mammals on BLM-administered lands in the Thomas Range. Under Purpose and Need, the EA stated:

The UDWR has noted a decline in chukar partridge, cottontail rabbit, and other small birds and mammals throughout the West Desert Range. The proposed catchments would allow small mammal and bird populations an opportunity to recover to historical levels, and perhaps be enhanced. These species in turn provide prey for raptors and other predators. One of these, the ferruginous hawk, is listed as a federal Species of Concern and as a state threatened species in Utah.

Recent recommendations from the Nevada * * * Division of Wildlife indicate that multiple small water developments spaced approximately one mile apart--a complex, are much more beneficial to small and nongame wildlife than a single large development. Units are placed in a mosaic pattern in topography where a natural water source might occur.

(EA J-050-098-106, at 1.)

The EA describes access to and installation of the proposed guzzlers as follows:

Access would be by four wheel drive pickup trucks and all terrain vehicles. Existing jeep trails and wash bottoms would be used to the extent possible. There would be some driving cross country. An attempt would be made not to create road access to the sites.

Hand tools will be used to install the tanks. Soil disturbance would be kept to the minimum amount needed to accomplish the task. Each disturbed site would be hand reseeded with a native seed mix appropriate for that site.

No hazardous materials would be used for the proposed action.

(EA J-050-098-106, at 3.)

Participating in the development of the EA were BLM staff with the following areas of expertise: Wildlife Biologist, Wild Horse and Burro Specialist, Rangeland Management Specialist, Geologist, Range Technician, Realty Specialist, Outdoor Recreation Planner, and Archaeologist. The EA considers a No Action Alternative to the proposed project, analyzes the environmental consequences of the action and its impact on soils, vegetation, wildlife, recreation, visual resources, wilderness and air quality, and assesses cumulative impacts and mitigation measures.

EA J-050-098-106 was reviewed by the BLM Area Environmental Coordinator and approved by the Fillmore Field Manager on October 13, 1998. The Fillmore Field Manager made a finding that the proposed action "will not have any significant impacts on the human environment and that an EIS is not required." (Environmental Assessment Record at 2.)

On January 11, 1999, BLM received a letter from UDWR requesting permission from the Fillmore Field Office to install six additional small mammal and bird guzzlers in the Thomas Range. UDWR stated that the proposed additional guzzlers were of the same type authorized under EA J-050-098-106 and were intended to "complement the larger existing multipurpose guzzlers built several years ago * * * [and] enhance the benefits to small species of wildlife." (Letter of Jan. 11, 1999, from Dennis G. Southerland, Habitat Development Specialist, UDWR, to Mark Pierce, Fillmore Field Office, BLM, at 1.)

BLM then conducted EA J-010-099-027EA. The EA/EIS review referenced the findings of EA J-050-098-106, noting that "[t]his project is identical to the earlier 1998 guzzler proposal, with the exception of locations." (Environmental Assessment Record at 2.) BLM made a finding of no significant impact and the Record of Decision was approved March 31, 1999.

In order to successfully challenge BLM's decision and finding of no significant impact, based on the EA, SUWA must demonstrate that the decision was premised on a clear error of law, a demonstrable error of fact, or that BLM's analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared; mere differences of opinion are insufficient to cause a reversal of BLM's action if it is reasonable and supported by the record on appeal. See Committee for Idaho's High Desert, 139 IBLA 251, 256-57 (1997), and cases cited.

We conclude that SUWA has failed to satisfy its burden of proof, and that BLM's decision was reasonable and supported by the record. To the extent appellant has raised arguments which we have not specifically addressed, they have been considered and rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed and appellant's Request for Stay is denied as moot.

John H. Kelly
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge